



Shane R. Heskin

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August 31, 2023

By E-Mail

Fred Stevens, Esq.
Klestadt, Winters, Jureller,
Southard, & Stevens, LLP
200 West 40th St., 17th Floor
New York, NY 10036-7203

RE: Spin Capital, LLC v. Golden Foothill Insurance Svces, LLC, et al.
NYS Sup. Ct., NY Cty, Index No. 650582/2022

Dear Mr. Stevens:

We represent the Leer Defendants and respectfully respond to your August 30, 2023 letter alleging that Life Shares 1019 has violated the Receivership Order in this above case.

As I stated during last week's meet-and-confer, it is the Leer Defendants' position that all insurance proceeds relating to the Utsick claim are owned by Life Shares 1019, and all must be paid to Life Shares 1019.

Please be advised that the Receivership Order referenced in your letter is void. *See Morrison v. Budget Rent a Car Sys.*, 230 A.D.2d 253, 260 (2d Dep't 1997) ("If, however, a court lacks subject matter jurisdiction, the parties may not confer it on the court (see, *Graham v New York City Hous. Auth.*, 224 A.D.2d 248; *Strina v Troiano*, 119 A.D.2d 566) and it may not be created by laches or estoppel (see, *Matter of Anthony J.*, 143 AD2d 668; *Nuernberger v State of New York*, 41 N.Y.2d 111, *supra*). More importantly in the case before us, we recognize that when a court lacks subject matter jurisdiction it may not acquire it by waiver (see, *Matter of Rougeron*, 17 N.Y.2d 264, 271, *cert denied sub nom. Rougeron v Rougeron*, 385 US 899). **"A judgment or order issued without subject matter jurisdiction is void, and that defect may be raised at any time and may not be waived."** (*Editorial Photocolor Archives v Granger Collection*, 61 NY2d 517, 523); *In re Messaros*, 262 A.D.2d 322, 324 ("A 'judgment or order issued without subject matter jurisdiction is void' and as such, the order of the Surrogate's Court herein is void (see, *Morrison v Budget Rent A Car Sys.*, *supra*, at 260; *Editorial Photocolor Archives v Granger Collection*, 61 NY2d 517, 523) (emphasis added). *See also* Ex. 1 (copy of docket).

August 31, 2023

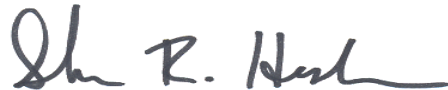
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The Court lacked subject matter jurisdiction when it issued the Receivership Order because Plaintiffs failed to serve and file a supplemental summons under CPLR 305. (“Where, upon order of the court or by stipulation of all parties or as of right pursuant to section 1003, a new party is joined in the action and the joinder is not made upon the new party’s motion, a supplemental summons specifying the pleading which the new party must answer ***shall be filed with the clerk of the court and served upon such party.***”) (emphasis added); *Worldview Entertainment Holdings Inc. v Woodrow*, 2022 N.Y. Misc. LEXIS 11052, *10-11 (N.Y. Sup. Ct. July 1, 2022) (“However, the court lacks subject matter jurisdiction where the party failed to file the summons and/or compliant, and lack of subject matter jurisdiction cannot be waived (see *O’Brien v Contreras*, 126 A.D.3d 958, 958-59 [2d Dept 2015]; see generally *Financial Indus. Regulatory Auth., Inc. v Fiero*, 10 N.Y.3d 12, 17 [2008])”); *Sangiaco v. County of Albany*, 302 A.D.2d 769, 770 (3d Dep’t 2003) (“It is well established that under the commencement by filing system, ‘service of process without first paying the filing fee and filing the initiatory papers is a nullity, the action or proceeding never having been properly commenced’ (*Matter of Gershel v Porr*, 89 N.Y.2d 327, 330, 653 N.Y.S.2d 82, 675 N.E.2d 836; see CPLR 304; *Matter of Fry v Village of Tarrytown*, 89 N.Y.2d 714, 719, 658 N.Y.S.2d 205, 680 N.E.2d 578).”).

Please also be aware that the prior Amended Complaint was “based on information and belief” that no consideration was provided for the alleged fraudulent transfer to Life Shares 1019. Discovery has shown that this allegation cannot be alleged in good-faith, and Life Shares intends to vehemently oppose any untimely attempts to now initiate an action against Life Shares 1019 or any other of the additional parties for which Plaintiffs failed to timely file and serve a summons. To be clear, Life Shares 1019 does not consent to adding it to this action and will oppose any such attempts to do so.

Very truly yours,

WHITE AND WILLIAMS LLP



Shane R. Heskin

SRH:bgb

EXHIBIT 1

650582/2022 - New York County Supreme Court

Short Caption: **SPIN CAPITAL, LLC v. Golden Foothill Insurance Services, LLC et al**

Case Type: **Commercial - Contract - Commercial Division**

Case Status: **Active**

eFiling Status: **[Full Participation Recorded](#)**

Assigned Judge: **Andrew Borrok**

Full Caption

Spin Capital, Llc v. Golden Foothill Insurance Services, Llc, Life Factor II, Llc, Life Shares II, Llc, El Dorado Hills Insurance Solutions, Inc., Lone Wolf Insurance Services, Inc., Eldo Investments, Llc, The Genesis Ls Fund, Llc, Ktl Holdings, Inc., Zurich American Life Insurance Co., Accordia Life And Annuity Company, John Hancock Life Insurance Company, Brighthouse Life Insurance Co., Cap Factor, Llc, Stefan Leer, Tatanisha Leer

Plaintiffs/Petitioners

Name

SPIN CAPITAL, LLC

Represented By

[MORRIS, MATTHEW JEROME](#) on 06/24/2022
PROSKAUER ROSE LLP

[WEISSMAN, NOAH M](#) on 08/30/2022
BRYAN CAVE LEIGHTON PAISNER LLP

[PICON, DAVID A](#) on 06/24/2022
PROSKAUER ROSE LLP

[WELLS, STEVEN WILLIAM](#) on 02/04/2022
Wells Law P.C.

[HAMDAN, LAITH J.](#) on 08/30/2022
BRYAN CAVE LEIGHTON PAISNER LLP

Defendants/Respondents

Name

Golden Foothill Insurance Services, LLC

Represented By

[WELLS, STUART JOSEPH](#) on 07/28/2022
White and Williams LLP

[COREY, ALEX DAVID](#) on 07/25/2022
White and Williams LLP

[HESKIN, SHANE ROBERT](#) on 04/29/2022
WHITE & WILLIAMS LLP
Attorney File #: [\(Add Attorney File #\)](#)

LIFE FACTOR II, LLC

[WELLS, STUART JOSEPH](#) on 07/28/2022
White and Williams LLP

[COREY, ALEX DAVID](#) on 07/25/2022
White and Williams LLP

[HESKIN, SHANE ROBERT](#) on 04/29/2022
WHITE & WILLIAMS LLP
Attorney File #: [\(Add Attorney File #\)](#)

LIFE SHARES II, LLC

[WELLS, STUART JOSEPH](#) on 07/28/2022
White and Williams LLP

[COREY, ALEX DAVID](#) on 07/25/2022
White and Williams LLP

[HESKIN, SHANE ROBERT](#) on 04/29/2022
WHITE & WILLIAMS LLP
Attorney File #: [\(Add Attorney File #\)](#)

EL DORADO HILLS INSURANCE SOLUTIONS, INC.

[WELLS, STUART JOSEPH](#) on 07/28/2022
White and Williams LLP

[COREY, ALEX DAVID](#) on 07/25/2022
White and Williams LLP

[HESKIN, SHANE ROBERT](#) on 04/29/2022
WHITE & WILLIAMS LLP
Attorney File #: [\(Add Attorney File #\)](#)

LONE WOLF INSURANCE SERVICES, INC.

[WELLS, STUART JOSEPH](#) on 07/28/2022
White and Williams LLP

[COREY, ALEX DAVID](#) on 07/25/2022
White and Williams LLP

[HESKIN, SHANE ROBERT](#) on 04/29/2022
WHITE & WILLIAMS LLP
Attorney File #: [\(Add Attorney File #\)](#)

ELDO INVESTMENTS, LLC

[WELLS, STUART JOSEPH](#) on 07/28/2022
White and Williams LLP

[COREY, ALEX DAVID](#) on 07/25/2022

White and Williams LLP

[HESKIN, SHANE ROBERT](#) on 04/29/2022

WHITE & WILLIAMS LLP

Attorney File #: [\(Add Attorney File #\)](#)

THE GENESIS LS FUND, LLC

[WELLS, STUART JOSEPH](#) on 07/28/2022

White and Williams LLP

[COREY, ALEX DAVID](#) on 07/25/2022

White and Williams LLP

[HESKIN, SHANE ROBERT](#) on 04/29/2022

WHITE & WILLIAMS LLP

Attorney File #: [\(Add Attorney File #\)](#)

KTL HOLDINGS, INC.

[WELLS, STUART JOSEPH](#) on 07/28/2022

White and Williams LLP

[COREY, ALEX DAVID](#) on 07/25/2022

White and Williams LLP

[HESKIN, SHANE ROBERT](#) on 04/29/2022

WHITE & WILLIAMS LLP

Attorney File #: [\(Add Attorney File #\)](#)

ZURICH AMERICAN LIFE INSURANCE CO.

[BEIN, ALEXANDER MATTHEW](#) on 05/20/2022

CARLTON FIELDS, P.A.

[Solares, Irma T](#) on 02/13/2023

ACCORDIA LIFE AND ANNUITY COMPANY

[GOULD, JASON H.](#) on 07/18/2022

CARLTON FIELDS, P.A.

JOHN HANCOCK LIFE INSURANCE COMPANY

[METZINGER, JACLYN MARIE](#) on 06/05/2023

KELLEY DRYE AND WARREN LLP

[HICKEY, CAITLIN ROSE](#) on 06/05/2023

KELLEY DRYE & WARREN

BRIGHTHOUSE LIFE INSURANCE CO.

[Darcambal, Michelle J](#) on 06/24/2022

d'Arcambal Ousley & Cuyler Burk LLP

[MILLIOEN, TIFFANY CELIA](#) on 06/24/2022

d'Arcambal Ousley & Cuyler Burk LLP

[HAMDAN, ZAINEB DIANE](#) on 12/06/2022

d'Arcambal Ousley & Cuyler Burk LLP

CAP FACTOR, LLC

[GIARDINO, JOHN J.](#) on 04/25/2022

Pryor Cashman LLP

[POHLMAN, DANIEL JOHN](#) on 09/06/2022

Pryor Cashman

Stefan Leer

[COREY, ALEX DAVID](#) on 07/25/2022

White and Williams LLP

[HESKIN, SHANE ROBERT](#) on 04/29/2022

WHITE & WILLIAMS LLP

Attorney File #: [\(Add Attorney File #\)](#)

Tatanisha Leer

[COREY, ALEX DAVID](#) on 07/25/2022

White and Williams LLP

[HESKIN, SHANE ROBERT](#) on 04/29/2022

WHITE & WILLIAMS LLP

Attorney File #: [\(Add Attorney File #\)](#)**Non-Parties**

Name

Fred Stevens Receiver

Represented By

[STEVENS, FREDERICK NELSON](#) on 03/14/2023

Klestadt Winters Jureller Southard & Stevens, LLP